

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU**

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

CRL.A.No. 170 of 2003(B)

SC.500/2001 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR

APPELLANT: ACCUSED

**CHATHU, S/O.VELLEN, PALLIYIL HOUSE,
KAURUVILASSERY, KADAVATHUKUNNU,
MUKUNDAPURAM TALUK, THRISSUR
DISTRICT, (MALA POLICE STATION LIMIT).**

**BY ADV. SRI.S.RAJEEV
SRI.N.K.UNNIKRISHNAN**

RESPONDENTS: COMPLAINANT

**STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J.B.KOSHY & K.R.UDAYABHANU, JJ.

CRL.APPEAL.NO.170 OF 2003 (B)

Dated this the 8th day of December, 2006

J U D G M E N T

KOSHY,J.

Appellant was convicted for offence punishable under Section 302 of the Indian Penal Code for murdering his wife by pouring kerosine on her and setting her on fire.

2. Malathi, wife of the accused died of burn injuries on her head, face, neck, upper part of both shoulder, both upper limbs and right side of front of thigh, from Medical College, Thrissur on 22.10.1999. Her brother, Velayudhan PW1, knowing about the hospitalisation of Malathi, came to Medical College near the time of her death and knowing the death he reported to the Police Station on 23.10.1999 and gave Ext.P1 F.I.Statement. Ext.P5 is the post mortem report. As per Ext.P1 F.I.Statement, the death was due to accidental fire occurred on the evening of 21.10.1999 at about 8.15 p.m. and died on

22.10.1999 at 12.15 p.m. In the F.I.Statement he stated that he has no idea about the death and it was purely accident. He had only hearsay information about the cause of death and he also stated that neighbours who gathered there told him that it was an accidental fire due to falling of kerosene lamp into her shoulder while she was working in kitchen.

3. The case of the prosecution is that one Prabhakaran was residing very close of the house of the accused. There was a marriage function at his house. The Panthal extended to the courtyard of the house of the accused and marriage to take place only after four days. There was heaps of waste dumped in the property of Prabhakaran. For cleaning of the waste which was dumped in front of the courtyard accused directed his wife to remove the same. First she refused to take the same as there is pain in her hand. Accused felt angry and when she went out and leaned to clean waste kerosene was poured out from MO1 lamp. He lightened the wick portion and keeping that part in his one hand poured the kerosene in the body and then threw the lighted wick on her causing fire which

spread over the body. She cried for help. Finally people gathered and accused poured water over her and accused, herself along with the help of PW5 taken her to Govt. Medical College Hospital, Mala, and thereafter to Medical College Hospital and on the next day by noon she died. PW5, a close neighbour who accompanied the deceased to the hospital along with the accused husband stated that when they reached the hospital she stated to the Doctor that accidental fire broke out because of the falling down of the kerosene lamp while she was working in kitchen. It is also stated by PW5 that she made the same statement to the Doctor when she was admitted in the Medical College Hospital. Ext.P10 is the wound certificate issued by the Doctor of Medical College Hospital, where the alleged cause of injuries is written as accidental burns from kerosene lamp. Originally case was registered as accidental death on the basis of Ext.P1. But there after about five months on the basis of some information received on 22.10.1999 PW13 conducted investigation again on 23.10.1999. Several persons were questioned on that case and a fresh scene mahazar was prepared and prepared final report stating that

accused is guilty of charges under Section 302 of I.P.C.

4. Prosecution mainly relied on the evidence of PW2. PW2 deposed that he came to the house of Prabhakaran in connection with marriage feast and a Pandal was being constructed in connection with marriage of Prabhakaran's daughter. There was load shedding for half an hour in that area and on that day from 7.30 to 8.00 p.m. was the power cut. He was cleaning places. He came there to take the list of things to be purchased for the marriage. He also stated that the wastes were gathered in the courtyard of the house of the accused and accused asked his wife to remove the same and there was some arguments between them and he became angry and he stated that "I will show you". Immediately he took the kerosene lamp and open the wick portion by one hand and kerosene was poured over her head and the lighted wick of the lamp was thrown on her and fire took place and she cried to save her. He stated as follows:

He also stated that son of the accused poured water and he also poured water. Thereafter she was taken to the hospital. He also stated that incident took place simultaneously when the power cut was over. During cross examination he stated that the police first questioned him after two months. He again stated that he was residing 15 kilometres away from the Prabhakaran's house. He did not listen what accused and his wife was talking. He also stated that before stating the incident to the police he has not stated to anybody else. He also did not think that it is a matter to be informed to the police. He further stated that he cannot say whether anybody else has seen it. He deposed as follows:

He further stated that he cannot say which is the lamp involved. He has not seen the lamp thereafter. He further stated that by the time when fire incident occurred accused was in the compound. When he was asked whether the fire accident occurred by falling down of kerosene lamp inside the house he answered that he had not seen it.

5. PW3 is another occurrence witness. He is a nephew of Prabhakaran. He was engaged in cleaning the courtyard and he also deposed the prosecution story in Chief examination. In cross examination he claimed that he cannot say who were all in the house at that time. He further stated that apart from him his uncle and a person who came there for preparing food was there. His name is not known and he further stated that at the time of power cut, he, accused, the cook and his uncle were

sitting around and talking.

He further stated that only after fire broke out he noticed the same and only by that time accused, his uncle and the cook stood up from the place where they were talking.

He further stated that by the time he reached there already water was poured on her by her son. He further stated that he cannot say whether kerosene was poured and on which part of the body kerosene was poured. He cannot also say that by that time whether deceased was standing or sitting. He was declared hostile as he also stated that he was questioned by

the police. He further stated in re-cross examination that he cannot say whether on which part of the body kerosene was poured as he has not seen it. It is stated as follows:

He further stated that he has deposed earlier as well as before the court due to fear of the police. PW4 is another witness who examined to depose in favour of the prosecution story. According to her, she was residing near the house of the accused and she saw they were sitting inside his house through the gap of the door and she did not come out as her husband prohibited going out. She further deposed in cross examination that at about 7.30 p.m. she slept and only by hearing the sounds she woke up and she has got enmity towards the accused. She deposed as follows:

She also stated that they were sleeping in the middle room near to the kitchen and there is a door in the kitchen and that

will be closed. Hearing the sound she came to the kitchen. Later she stated that lying in the middle room she heard and saw the incident.

She further stated that she woke up only after hearing loud cry and when she look she saw Malathi was running with fire.

Later she stated that she came to know about the cause of death from the neighbours. She deposed as follows:

PW5 is a neighbour. He deposed that when he came deceased malathi was running with fire and he has not seen the incident. But he admitted that he took Malathi along with the accused to the doctor and Malathi has deposed before the Doctor, Mala Hospital or Medical College Hospital, that it was an accidental

fire. PW6 stated that he heard the cry of Malathi who was running with fire to save and by the time he reached there water was poured on her body and she was lying down.

PW13 was the investigating officer. PW11 Doctor who conducted post mortem noticed as follows:

“Superficial and deep burns on the head, neck, face, upper part of both shoulder, back of both shoulder, both upper limbs, right side of front of thigh, scalp hairs on the front of head were found singed.”

He was of the opinion that post mortem findings were consistent with death due to burns. He also stated that accidental burns can be excluded as usually in accidental burns the distribution of burns will be below upwards. Here it was above downwards. He also stated that there is possibility of homicidal burns. A lamp with loosened top and with possibility

of spilling, falls from above on the head of the victim, such burns can happen.

6. A reading of the evidence would show that apart from PW2's evidence there is no evidence to show that accused has done the crime. Evidence of PWs.3 and 4 shows that they have not seen the incident. PWs.5 and 6 came immediately after the incident. In chief examination itself PW5 stated that deceased stated to the medical officer at Mala as well as to the Doctor of Medical College hospital that it was an accidental fire caused by herself. The statement is uncontroverted and as a prosecution witness he has stated so. The learned counsel for the appellant argued that CW19 doctor at Mala and CW20 Doctor who issued Ext.P10 certificate from Medical College Hospital were not examined, to suppress these materials. Even though C.D. materials cannot be taken into account, the Public prosecutor stated that C.D.statement also shows that accused has stated so before the two doctors and it was written that the deceased has stated that it was an accidental death due to the burns. The deposition of PW5 regarding the statement of the

doctor who issued Ext.P10 certificate can be relied on. It is the last statement of the deceased. In this connection we also refer to Ext.P1 F.I.Statement wherein PW1 stated that it is an accidental death as ascertained from neighbour. If PWs.3 and 4 had seen the incident, such a statement would not have been made by the neighbours. PW1 supported only after about five months. With regard to the evidence of PW2, we are of the opinion that presence of PW2 is also not established. He stated that he is a relative to Prabhakaran. Prabhakaran was also not examined. He was there. PW3 also stated that he, Prabhakaran as well as cook and the accused were talking when the incident occurred. It is not stated by PW2 that he was a cook. Presence of PW2 is not established. He has not accompanied the injured to the hospital and he did not defer those facts for several times to anybody. The son of the accused whose statement recorded the inquest also shows that it was an accidental fire. But however, he was not examined and inquest statement by son remains only a 161 statement and cannot be relied. But if prosecution was intending to prove the truth, it should have examined the son

of the deceased, who poured water first as deposed by other witnesses.

7. In any event, at the maxim, the evidence adduced in this case causes only a suspicion to convict the person for the offence punishable under Section 302. Mere suspicion is not enough. There should be conclusive proof. The conduct of the accused also shows that there is no intention of murdering the deceased. He himself along with PW5 took the deceased to the Hospital at Mala and thereafter to Medical College Hospital, Thrissur.

8. From the totality of the evidence, we are of the opinion that the charges against the accused were not proved beyond reasonable doubt. Hence we acquitt the accused.

In the result, this appeal is allowed. Accused is found not guilty of the offence and hence he is acquitted. He should be

set free forthwith if his continued detention is not required in connection with any other case.

J.B.KOSHY, JUDGE

K.R.UDAYABHANU, JUDGE

prp

J.B.KOSHY & K.R.UDAYABHANU, JJ.

CRL.APPEAL.NO.170 OF 2003 (B)

J U D G M E N T

8th December, 2006